

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Rikin S. Patel	§	Art Unit:	2451
		§		
Serial No.:	10/729,607	§		
		§	Examiner:	Glenford J. Madamba
Filed:	December 5, 2003	§		
		§		
For:	System and Method for Fault	§	Atty. Dkt. No.:	200901531-1
	Management in a Service-	§		(HPC.0900US)
	Oriented Architecture			

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

PETITION UNDER 37 C.F.R. § 1.181(a)

Sir:

The Examiner has improperly raised a new ground of rejection in the Examiner's Answer dated June 4, 2009.

This is a request that the ground of rejection set forth in the Examiner's Answer be designated as a new ground of rejection over Hsu, Cantania, and Russell.

The Examiner has improperly applied a new reference (Russell, U.S. Patent Publication No.2004/0039964) to support the final rejection of the claims under 35 U.S.C. § 103 over Hsu and Cantania raised in the Office Action dated May 16, 2008.

As specifically stated in the M.P.E.P.:

A new prior art reference **applied or cited** for the first time in an examiner's answer generally will constitute a **new ground of rejection**. If the citation of a new prior art reference is necessary to support a rejection, it **must be included in the statement of rejection, which would be considered to introduce a new ground of rejection**. Even if the prior art reference is cited to **support the rejection in a minor capacity, it should be positively included in the statement of rejection**.

M.P.E.P. § 1207.03 (8th ed., Rev. 7), at 1200-37 (emphasis added).

Russell was discussed at some length on pages 21, 22, and 32 of the Examiner's Answer. Specifically, the Examiner cited the discussion in Russell regarding serializing of a JavaBean message object, which was not an issue that was raised in the final rejection. The Examiner argued that Russell discloses "the well-known feature of converting or 'translating' request/response messages from a 'web services' format to a 'non-web services' format—and vice versa—through 'serialization'/'deserialization'...." Examiner's Answer at 21. Arguments regarding converting or translating messages from a web services format to a non-web services format through serialization or deserialization were never mentioned in the final rejection.

In fact, the references Hsu and Cantania relied upon by the Examiner do not provide any teaching or hint of using serialization or deserialization.

Therefore, it is respectfully submitted that the Examiner's Answer raised a new ground of rejection without properly designating such as a new ground of rejection.

The M.P.E.P. states that a new ground of rejection **must** be:

(A) approved by a Technology Center (TC) Director or designee; and

(B) prominently identified in the “Grounds of Rejection to be Reviewed on Appeal” section and the “Grounds of Rejection” section of the answer.

Id. at 1200-35. Neither requirement was satisfied in the Examiner’s Answer.

Therefore, it is requested that the ground of rejection set forth in the Examiner’s Answer be designated as a new ground of rejection over Hsu, Cantania, and Russell.

In view of the foregoing, reversal of all final rejections and allowance of all pending claims is respectfully requested.

The Commissioner is authorized to charge any required fees for the Petition to Deposit Account No. 08-2025 (200901531-1).

Respectfully submitted,

Date: August 3, 2009

/Dan C. Hu/

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